

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
DAVID M. GLOVER, JUDGE

DIVISION III

CA06-816

March 21, 2007

SHERRY LOVESEE

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

APPEAL FROM THE MARION  
COUNTY CIRCUIT COURT  
[JV-04-43-2]

HONORABLE GARY B. ISBELL,  
JUDGE

AFFIRMED

Appellant, Sherry Lovesee, appeals the termination of her parental rights to two of her daughters, T.M. (D.O.B. 4/27/93) and S.L. (D.O.B. 8/29/96).<sup>1</sup> On appeal, she argues that the trial court erred in terminating her parental rights because there was not clear and convincing evidence (1) that she had failed to correct the conditions that caused the removal of the juveniles and that she manifested an incapacity or indifference to remedy subsequent issues, and (2) that termination was in the children's best interest; that the

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<sup>1</sup>Lovesee is also the mother of three other children, two of whom are not involved in this case. The other child, T.L., Jr., was originally part of this case; however, he was placed with a family member and Lovesee's parental rights were not terminated as to him. The parental rights of the fathers of T.M., Tim Miller, and S.L., Thomas Lovesee, Sr., were also terminated; however, they are not parties to this appeal.

juveniles were likely to be adopted; and that there was potential harm from continued contact with appellant. We affirm the termination of appellant's parental rights.

In *Camarillo-Cox v. Arkansas Department of Human Services*, 360 Ark. 340, 351-52, 201 S.W.3d 391, 398-99 (2005) (internal citations omitted), our supreme court stated the well-known standard of review in parental-termination cases:

In cases where the issue is one of termination of parental rights, there is a heavy burden placed upon the party seeking to terminate the relationship. Termination of parental rights is an extreme remedy in derogation of the natural rights of the parents. Nevertheless, parental rights will not be enforced to the detriment or destruction of the health and well-being of the child. Parental rights must give way to the best interest of the child when the natural parents seriously fail to provide reasonable care for their minor children. On appellate review, this court gives a high degree of deference to the trial court, which is in a far superior position to observe the parties before it.

Pursuant to Ark. Code Ann. § 9-27-341(b)(3) (Repl. 2002), an order terminating parental rights must be based upon clear and convincing evidence. Clear and convincing evidence is that degree of proof that will produce in the factfinder a firm conviction as to the allegation sought to be established. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. In resolving the clearly erroneous question, we give due regard to the opportunity of the trial court to judge the credibility of witnesses.

DHS originally filed a petition for dependency/neglect on June 4, 2004, but this petition was not heard because DHS filed a petition for emergency custody of both S.L. and T.M. on July 28, 2004, alleging in the accompanying affidavit that Marion County Division of Children and Family Services became involved with the family on that date after a Marion County deputy sheriff contacted them stating that he had two children, S.L. and T.M., in custody at the jail. The girls, seven and eleven at the time, had walked from

Bruno to Yellville; S.L. had no shoes on; and both girls' heads were shaved bald from having head lice. S.L. told authorities that she had not eaten all day because appellant had taken sleeping pills that made her sleep for most of the day. The girls also said that appellant smokes "weed" and drinks beer in front of them until she throws up. A social worker and a deputy sheriff took the girls home, a sixteen-minute trip by vehicle, and upon arrival found appellant angry at the girls for "running off." She said that she had been looking for them for three hours and had called the sheriff's office and reported them missing. At the same time the petition for emergency custody was filed, DHS also included an affidavit listing the chronology of DHS's case on the Lovesee family, beginning in March 2003. Some of the instances documented in that affidavit included ten-year-old T.M. being outside without a shirt on; T.M. stealing money; Lovesee drinking during a parenting session; Lovesee missing various appointments such as parenting sessions and therapy; and Lovesee missing the children's therapy sessions. An order of emergency custody was entered on the same day.

A probable-cause hearing was held on August 3, 2004, and the trial court found that there was probable cause to continue T.M. and S.L. in DHS custody. In its order, the trial court authorized DHS to arrange appropriate and expanded visitation with appellant pending further hearings or orders, and it ordered DHS to develop an appropriate case plan for the juveniles. The trial court also ordered appellant to submit to random drug screens; to complete parenting classes; and to participate in the children's therapies as

recommended. Melinda McGee, a paternal grandmother, was allowed to intervene in the case regarding the issue of relative placement at this hearing.

The adjudication hearing was held on September 29, 2004, at which time the trial court found that the children were dependent/neglected, which the parents stipulated to without admission to any facts contained in the affidavits filed with the petitions. The trial court also found that it was contrary to the welfare of the juveniles to return them to their parents and that it was in their best interests to continue custody with DHS. Reunification was ordered to be the goal of the case plan for both of the girls. Parental visitation was continued as previously ordered. Appellant was ordered to provide a safe and healthy home for the children; to submit to a psychological examination; and to provide a certified copy of her divorce decree.

The permanency-planning hearing was held on August 3, 2005, and the trial court found that it was in the girls' best interests to continue them in DHS custody. The trial court ordered that reunification remain the goal "only because the parents have been complying with the established case plan and orders of the court and have made significant measurable progress toward achieving the goals established in the case plan, and the parents have been diligently working towards reunification," but stated that reunification was expected to occur "within a time frame that is consistent with the juveniles' developmental needs." DHS was ordered to assist appellant with transportation for job searches if she had interviews set up and to assist her in locating housing. Appellant was

ordered to maintain stable employment; to obtain and maintain stable housing; to attend visitation and family therapy with the girls on a weekly basis; to maintain stable transportation; to continue in the community-service program to pay off her fines; to submit to random drug screens and to remain drug free; to refrain from associating with persons who use, manufacture, or distribute illegal substances; to obtain an individual therapist who could work with the girls' therapist to help her understand the importance of children learning by example and to learn about T.M.'s special needs; and to attend relationship therapy with her husband.

The fifteen-month permanency-planning hearing was held on October 12 and November 16, 2005. At that hearing, the trial court changed the goal of the case plan from reunification to termination of parental rights and ordered that the goal would be adoption with a concurrent goal of relative placement. In its order, the trial court specifically found that DHS had gone above and beyond to provide services, especially for appellant; that appellant had not made efforts until the last few weeks to achieve compliance with the case plan and court orders; that appellant could not provide financially for the basic needs of the children; that the girls were at critical stages of their development; that the relationship between the juveniles and their parents was getting worse instead of better; and that T.M. had expressed to her therapist and others that she did not want reunification. The trial court ordered DHS to continue providing transportation assistance for appellant for her job, counseling, doctor, and any visits with the juveniles.

DHS filed a petition for termination of parental rights on December 9, 2005. The grounds for termination alleged against appellant were that the juveniles had been adjudicated dependent/neglected and had continued out of appellant's custody for twelve months and, despite a meaningful effort by DHS to rehabilitate appellant and correct the conditions which caused removal, those conditions had not been remedied; that the juveniles had lived outside appellant's home for a period of twelve months and she had willfully failed to provide significant material support in accordance with her means or to maintain meaningful contact with the juveniles; that subsequent to the filing of the original petition for dependency-neglect, other factors or issues arose that demonstrated that return of the juveniles to appellant was contrary to the juveniles' health, safety, or welfare and that, despite the offer of appropriate family services, appellant had manifested the incapacity or indifference to remedy the subsequent issues of factors or rehabilitate her circumstances that prevented return of the juveniles to her custody.

The termination hearing was held on February 17 and March 31, 2006, after which the trial court terminated appellant's parental rights to S.L. and T.M. The grounds for termination were (1) the juveniles had been adjudicated to be dependent-neglected and had continued out of the custody of the parents for over nineteen months and, despite a meaningful effort by DHS to rehabilitate the parents and correct the conditions that caused removal, those conditions had not been remedied by the parents, and (2) the juveniles had lived outside the home of the parents for over nineteen months and the parents had

willfully failed to provide significant material support in accordance with the parents' means or to maintain meaningful contact with the juveniles.

At the termination hearing, Leah Everett, a therapy foster-care case manager, testified that she supervised the visits between appellant and the girls. Everett said that the interaction between S.L. and appellant was currently going very well, as opposed to times in the past when there was a lot of arguing and S.L. was tense or nervous. She testified that the girls needed consistency and firmness, and she believed that with appropriate services appellant might be able to have the girls in her home and provide them with what they needed. However, she admitted that she did not know if appellant's behavior would remain consistent, and she also said that a caseworker would need to continue to work with appellant because it took appellant a while to understand what she needed to do. Everett said that she believed that appellant had been placing more effort into her parenting in the last month — she thought that appellant had known what she needed to do and how to do it but was just now deciding that she really wanted to do it. Everett said appellant had been consistent in her visitation with the girls, she did not think that appellant had shown indifference to being a parent, and she questioned why trial placement had not been attempted.

Everett said that the problems the girls came into the program with were still current issues, such as decreasing anxiety, dishonesty, and manipulation. She also admitted that if appellant reverted to her old ways, it would be difficult to maintain

consistency in the girls' lives, which they needed. Everett also admitted that enough progress had not been made that the girls could be sent home. She noted that when appellant's visitation ceased, the girls' behavior improved, and, when visitation resumed, their behavior became worse. Everett said that the recommendation was termination because they were still not any further along with reunification than in November 2004 or March 2005, but she said that if appellant had been doing what she had done in the last month over the past year, she believed that the case would have been at a different place at this time. She said that the girls were not ready to go anywhere at this time because they kept changing their minds about what they wanted. Everett also stated that it would be difficult to find someone to adopt the girls because of their problems.

Heather Fendley, a DHS family-services worker, testified that DHS had provided the family every service available, including transportation, employment assistance, housing assistance, IFS services, homemaker services, worker visits, family counseling, and individual counseling. She said that appellant was asked to provide structure, stability, and consistency; to learn parenting skills and implement them; to properly supervise the children; to recognize the girls' manipulations and to treat them as individuals with different needs; to attend individual counseling; to attend marriage counseling; to obtain employment, transportation, and housing; to complete parenting skills and anger-management classes; to manage her medical conditions and medication; and to be able to make a budget. Appellant was also asked to submit to random drug screens and to refrain

from using illegal drugs; to provide proper nutrition and to set a good example for her girls in hygiene; to complete a psychological exam; to resolve her legal issues; to attend therapy on a weekly basis with the children; and to be available for visitation.

Fendley said that appellant did do some things, such as complete an assessment for substance abuse, attend family-therapy sessions and individual counseling, complete anger-management classes, and obtain transportation in the past thirty days. Although she passed her drug screens for a period of time, appellant also had periods of time where she failed her drug screens. Fendley said that appellant had completed parenting classes and her psychological evaluation, and that she was working on resolving her legal issues and managing her medications. Although appellant had completed multiple budgets, Fendley said that some of them were not realistic. She said that in the last three weeks, appellant had taken an interest in her appearance, and that she had been more receptive to suggestions and was trying to implement some of what had been discussed with her. Fendley said that appellant had always been very oppositional to anyone in authority, and that, although that problem had improved during individual therapy, the change did not last; she said that the problem she saw in the last three weeks was appellant's regression back to the more aggressive and less inviting person that was present at the beginning of the case. Fendley said that there was a problem with appellant not being accepting and understanding of the needs of the girls, that the girls were treated differently in the home, and that T.M. had flatly said that she did not want to live with her mother. Fendley said

that DHS was recommending termination based upon the emotional and physical needs of the children; that the girls needed stability that appellant was not able to provide; and that the girls would be harmed if they were returned to appellant. Fendley said that she was concerned that because appellant had not been able to implement and maintain what she had learned that the girls would be “back to square one” in their behavior, and she was concerned that appellant had not begun working on improvements until thirty days prior to the termination hearing. Fendley said that there were twenty-one people on the list for potential adoptive placements that week.

Fendley testified that, although appellant did have a job, her budgeting and money-management skills were poor, and that she could not provide for the children because she could not pay her bills by herself. She further touched on the issue of the unresolved state of appellant’s marriage and the lack of supervision for both of the girls.

Rebecca Ansel testified that appellant had successfully completed the Center for Individual and Family Development program at Baxter Regional Medical Center. She said that, when pressured, it was not out of the ordinary to see someone slip back to prior negative coping skills, but that they could “get back on track again” and implement positive coping skills. She said that the last three weeks of appellant’s progress was a “build up” of what she had learned, and she thought that appellant had an ability to parent. Ansel said that appellant showed a “huge” desire to get her children back, and that, to her knowledge, appellant was doing everything that was required of her.

Linda Hammett, a licensed certified social worker, testified that she had worked with the girls and appellant, and that neither of the girls had ever expressed a desire to go home with appellant. The girls told Hammett that they were “whipped and beaten” and that they were not fed properly. She said that the girls were always happy to see appellant during visits and looked forward to the visits, but that they did not have a problem telling appellant that they did not want to go home with her. Hammett said that, while appellant had made some progress, it was not enough. She also said that she was concerned that when T.M. told appellant that a cousin had molested her, appellant was not supportive of T.M. and instead took a “very neutral ground.” Hammett said that both of the girls were antagonistic and “quite good” at manipulation.

Appellant testified that she was still married to Thomas Lovesee, but that he was in rehab at a lock-down facility. She said that he would need counseling after he left his current situation and prior to him returning to the family home. She said that she worked at McDonald’s and had been there for eight months. She said that she had prepared “quite a few budgets” for this case and thought that she was realistic about her expenses and her budget, but she admitted that she was on a limited income. She said that she had paid her fines in Flippin, but that she still had community service to perform in Yellville. Appellant asserted that she did nurture and discipline her children. She said that she had gone to therapy and had attended and completed drug treatment, where she learned that she needed help controlling her addictions, although she admitted that she had had two

positive drug tests since she had completed the program. She said that the NA and AA meetings she attended were “really depressing” and that the people were not serious about their sobriety, which was not what she needed. She said that she went to Christian Fellowship for support with her drug addiction, but that DHS had not been supportive of that choice, even though she had tested negative for drugs for ten months. Appellant said that she had been labeled a “nut” because of her religious approach to drug therapy, and that DHS had suggested that she should have different therapy.

In her favor, appellant pointed out that she had been going to her doctor appointments; had been taking her medication; had been sober for ten months; had worked at the same job for eight months; had an apartment since November 2005; had transportation and insurance since February 2006; had paid bills; had paid the largest part of her criminal fines; had completed therapy with Ansel; and had completed anger-management, parenting, and drug-treatment classes. She said that she believed that she was improving as a parent.

On cross-examination, appellant admitted that her girls were in DHS custody from August 2004 to August 2005 and that during that time, she worked on getting herself back together, but that it was difficult having her kids taken away. She admitted that until she obtained her current job, she did not have consistent employment since August 2004, and she acknowledged that she and Mr. Lovesee would need marriage counseling when he was released from rehab. She stated that she would like to move the children to Oklahoma,

although she admitted that she did not have any offers of employment there or a home in which to live. She said that it was her understanding that if she had stable employment and stable housing that she would be reunified with her children.

Heather Fendley testified again, stating that she had not discouraged appellant's reliance upon her religion, but that she had told her that if the religious counselor appellant saw was not a certified counselor, she could not admit that into evidence as therapy. Fendley said that she did not believe that it was an accurate statement that appellant had done everything DHS required of her, that while since the permanency-planning hearing appellant had made an attempt to do many things, and while she did complete some classes, there had been no significant application of anything appellant had learned. Fendley said that DHS was not advocating termination because appellant was poor, noting that although appellant's financial situation and budgeting had been issues, that was not what the termination request was based upon; rather, the largest barriers for reunification were the relationship between appellant and her husband and the inability of appellant to accurately assess the differences between the children and to address each child's behavior.

During the termination hearing, DHS also introduced an order from the domestic-relations division of the Marion County Circuit Court, filed on October 12, 2005, from a case between the Office of Child Support Enforcement and appellant, in which it was found that appellant was in arrears on child-support payments as of September 30, 2005, in

the amount of \$966. Appellant was ordered to pay \$5 per week on the arrearages and \$25 per week as current child support.

At the close of the evidence, the trial court commended appellant on her progress, stating that she was now in a place where she had not been in a really long time. The court said that it was proud of appellant's personal growth, but that the case did not measure personal growth, it measured familial growth, and that even though appellant was better, that did not necessarily make things better for the children. The trial court pointed out that the girls did not even want to live with each other, much less their parents, and that nineteen months after the start of the case, the only measurable contact between appellant and the girls was one hour per week, supervised. The trial court found that the kids were essentially on hold, and that it could not abide that situation anymore, stating that holding out hope for appellant and her husband suppressed the court's concerns for the girls, and that the court could not ask the girls to wait any longer to see if the situation got better. The trial court stated that it had a lot of expectations of appellant and her husband that they would figure out what was important to change, what they had to commit themselves to, and how they had to conduct themselves in order to show that they were serious about their family, but that it had never happened. The trial court then found that there was clear and convincing evidence to terminate appellant's parental rights, finding that adoption was in the best interests of both children.

We first note that one of the bases upon which the trial court terminated parental rights was the willful failure to support the children. Appellant does not contest this ground in her appeal, and we can affirm the trial court's decision on that basis alone.

Appellant contends that there was not clear and convincing evidence that she had failed to correct the conditions that caused the removal of the girls and that she manifested an incapacity or indifference to remedy subsequent issues; that termination was in the children's best interest; and that there was potential harm from continued contact with appellant. However, a review of the testimony at the termination hearing reveals otherwise. This case had been ongoing for over nineteen months at the time of the termination hearing. There was testimony from several witnesses that appellant would not utilize what she had learned, and that her inconsistency was harmful to the girls and would put them right back at "square one" with regard to their behavior problems. Additionally, although appellant had made progress in getting her life together, it was too little, too late. Her eleventh hour push for improvement was not sufficient to prove that she had in fact made lasting measurable progress. *See Camarillo-Cox, supra; Trout v. Arkansas Dep't of Human Servs.*, 359 Ark. 283, 197 S.W.3d 486 (2004). In fact, Leah Everett testified that had appellant been making such progress over the last year instead of the last month, appellant would be at a much different place.

As for appellant's argument that there was not clear and convincing evidence that the girls were likely to be adopted, there was conflicting testimony as to whether the

children could be adopted. However, Heather Fendley testified that there were twenty-one people on the list for potential adoptive placements, and the trial court was certainly entitled to believe that testimony, given the due regard this court accords the trial court in determining the credibility of witnesses. *Camarillo-Cox, supra*. We cannot say that the trial court was clearly erroneous in terminating appellant's parental rights.

Affirmed.

MARSHALL and BAKER, JJ., agree.